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| Foster Pepper PLLC 1111 3rd Avenue Suite 3400 Seattle, WA 98101-3299 | | | | |
| EXAMINER | | | | |
| LU, JIPING | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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patents@foster.com

Office Action Summary**Application No.**

10/785,383

Applicant(s)

STORRER ET AL.

Examiner

JIPING LU

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2012.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 43-54 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 43-54 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE-08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claims Status

1. Claims 1-42 have been cancelled. Claims 43-47 and newly added claims 48-54 are now in the case.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 43-47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed limitations regarding *flexible* membrane (claim 43), *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46) and the first direction is *substantially* non-parallel relative to the second direction (claim 47) constitute new matter which are not supported by the originally filed specification. Fig. 6D does not support the claimed similarly-shaped members because Fig. 6D is only a top-view of the grid. The originally filed specification also fails to disclose the claimed *flexible* membrane (claim 43), *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46) and the first direction is *substantially*

non-parallel relative to the second direction (claim 47) because page 25, lines 2-3 only disclose an impermeable membrane, page 23, lines 20-25 and Figs. 6C and 6D do not disclose *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46), and page 23, lines 22 to page 24, line 2 and Fig 6C, 6C do not disclose the first direction is *substantially* non-parallel relative to the second direction (claim 47).

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claim 48 is rejected under 35 U.S.C. 102(b) as being anticipated by Jarnagin et al. (U. S. Pat. 4,798,034).

Jarnagin et al. disclose an apparatus attachable to a vacuum source for removing moisture from a building structure comprising an elongated manifold 19 defined by a plurality of faces 21, 22, 23 forming a volume that is sealable relative to at least one of a wall-floor junction (see Fig. 1); and a vacuum hose port (not numbered, see fig. 2, port connects pipe 36) formed in one of the plurality of faces 21, the vacuum hose port configured to be in fluid communication with a vacuum source 41 (see Fig. 1).

6. Claims 51-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Komata (JP 08042148).

Komata shows (Figs. 1-4) a surface drying system having a vacuum source comprising a water-impermeable membrane 7 having an upper side (portion connects 7 and 8), a lower side (center portion of 7) and a perimeter (edges of 7), the lower side being configured to be

positioned proximate to the surface to be dried; a port (lower end of 8) within to membrane 7, the port configured to allow water and air to pass from lower side to upper side of the membrane and the vacuum source (see abstract); and a grid 1 associated with the lower side of the membrane, the grid 1 further comprising a plurality of passages 4 that permit the travel of air and water between the surface and the membrane from locations distant from the port toward the port when the membrane is placed adjacent the surface, wherein the vacuum source creates an enclosure of negative pressure within the perimeter of the membrane and urges water to flow through the passageways towards the vacuum source to effect moisture removal. The grid 1 is formed separately from the membrane 7. The port includes a manifold 8, the manifold 8 having at least one nozzle (at the junction of the tip of 8), the first end (above 8) of the nozzle connectable in fluid communication with the vacuum source and the second end (below 8) is in fluid communication with the port (directly below 8). The membrane 7 is sealed to the surface.

7. Claims 51-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Creskoff (U.S. Pat. 3,506,747).

Creskoff shows (Figs. 1-4) a surface 70 drying system 20 having a vacuum source 44. A water-impermeable membrane (Fig. 1) has an upper side 22, lower side 54, and a perimeter 20. The lower side 54 is configured to be position proximate to the surface to be dried 70. A port 44 is provided within the membrane (at 26-32). The port 44 is configured to allow water and air to pass from the lower side 54 to upper side 22 of the membrane and the vacuum source 44. A separate grid 26, 28, 30, 32 is associated with the lower side 54 of the membrane. The grid further comprises a plurality of passages 32, 34, 36, 38 that permit the travel of air and water between the surface and the membrane from locations distant from the port 44 toward the port 44

when the membrane is placed adjacent the surface 70. Wherein the vacuum source creates an enclosure of a negative pressure within the perimeter of the membrane and urges water to flow through the passageways towards the vacuum source to effect moisture removal (col. 2, lines 35-36). The grid is separately formed (but integrally connected) from the membrane. The port includes a manifold (directly below 44), a nozzle (at the junction of the tip of 44). The first end of the nozzle (at 44) is connected to the vacuum source. The second end of the nozzle is in fluid communication with the port (directly below 44). The membrane 20, 22 is sealed to the surface 70.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
9. Claims 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarnagin et al. (U. S. Pat. 4,798,034) in view of Romer (U. S. Pat. 4,660,333)

The apparatus of Jarnagin et al. as above includes all that is recited in claims 49-50. Jarnagin et al. also disclose that the plurality of faces of an elongated manifold include a first face 22, a second face 23, and a vacuum-attach face 21. the vacuum-attach face coupled to the first face, the second face. The first and second faces are approximately perpendicular to one another. However, Jarnagin et al. do not disclose the plurality of faces include side faces. Romer teaches an elongated manifold 100 defined by a plurality of faces forming a volume that is sealable relative to at least one of a wall-floor junction (see Fig. 1). The plurality of faces include side faces 192 (see Figs. 1, 7). Therefore, it would have been obvious to one having ordinary

skill in the art at the time the invention was made to modify the apparatus of Jamagin et al. to provide the elongated manifold of Jamagin et al. with side faces as taught by Romer in order to close both ends of the elongated manifold.

10. Claims 43, 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenander (U. S. Pat. 4,203,714) in view of Ferrand (U. S. Pat. 3,150,029) or De Winter (U. S. Pat. 3,811,287) and Creskoff (U. S. Pat. 3,506,747).

Wenander shows an apparatus attachable to a vacuum source for removing moisture from a building structure comprising a grid 2, a tunnel-shaped plate 3 supportable on a portion of the grid 2, the plate having at least one vacuum attachment port (between 3 and 4) to permit fluid communication between the building structure and a vacuum source. Ferrand shows a grid having a first plurality of members 2 arranged in a first direction and a second plurality of members 1 arranged in a second direction, the second plurality of members 1 supported on the first plurality of member 2 to form a three-dimensional lattice structure (Fig. 7) that permits efficient air flow through the structure and over a large surface, the first direction is different and substantially non-parallel relative to the second direction, the grid configurable to be place on at least a portion of the building structure. The first and second plurality of members of the grid comprise generally parallel rows of strands (Figs. 1, 3-7). De Winter shows a grid having a first plurality of members 4 arranged in a first direction and a second plurality of similarly-shaped members 5 arranged in a second direction, the second plurality of members 5 supported on the first plurality of member 4 to form a three-dimensional lattice structure (Fig. 1), the first direction is different and substantially non-parallel relative to the second direction, the grid configurable to be place on at least a portion of the building structure. The first and second

plurality of members of the grid comprise generally parallel rows of strands (Figs. 1, 3). Creskoff teaches a concept of providing grid and plate and vacuum attachment port with sealing membrane 24-32 for sealing the structure among grid, plate and vacuum attachment port. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Wenander to include a three -dimensional lattice structure grid as taught by Ferrand or De Winter in order to pursue an intended use and to further modify the apparatus of Wenander to include sealing membrane as taught by Creskoff in order to seal the structure among grid, plate and vacuum attachment port and therefore improve the moisture removal efficiency. As to the claimed plastic sheet material of sealing membrane, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the sealing membrane made by any desired material in order to pursue an intended use and obtain a predictable sealing result, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. As to the claimed limitations in last three lines of claim 43, it is a common practice in the sealing art to extend sealing membrane past a periphery of one component for sealing that component relative to other component.

11. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wenander (U. S. Pat. 4,203,714) in view of Ferrand (U. S. Pat. 3,150,029) or De Winter (U. S. Pat. 3,811,287) and Creskoff (U. S. Pat. 3,506,747) as applied to claim 43 above, and further in view of Rountree (U. S. Pat. 1,713,398).

The apparatus of Wenander as modified by Ferrand or DeWinter and Creskoff as above includes all that is recited in claim 44 except for the vacuum attachment port includes a barbed nozzle. Rountree teaches a concept of providing vacuum attachment port with a barbed nozzle (claim 1) same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the apparatus of Wenander to include a barbed nozzle as taught by Rountree in order to pursue an intended use.

Response to Arguments

12. Applicant's arguments filed 1/20/12 have been fully considered but they are not persuasive. In response to the applicant's arguments, first, claims fail to structurally define over the prior art references. The broadened scope of the newly added claims 48-54 was clearly anticipated by the prior art patents to Wenander, Creskoff and JP Patent to Kamata as rejected in previous Office actions. Second, on pages 5-6 of the Remarks, the applicant argues that the newly added and claimed features in claims 43, 46 ad 47 are supported by the original specification. Examiner disagrees the originally filed specification supports the claimed limitations for the reasons as shown in above rejection under 112 first paragraph. The applicant argues that the word "visqueen" used on line 3 of page 15 of the original specification means a flexible membrane. The examiner cannot accept this definition from a website. The applicant may be his own lexicographer but cannot now introduce new meaning of the word via extrinsic evidence. With regard to the new matter "*at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands" claimed in claims 46, Fig. 6D can not be interpreted in such manner as argued by the applicant. Fig. 6D simply does not

support the claimed similarly-shaped members because Fig. 6D is only a top-view of the grid. Page 25, lines 2-3 only disclose an impermeable membrane, page 23, lines 20-25 and Figs. 6C and 6D do not disclose *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46). With regard to claim 47, the new matter “the first direction is *substantially* non-parallel relative to the second direction”, the feature clearly is not supported by the originally filed specification. The originally filed specification simply fails to disclose “the first direction is *substantially* non-parallel relative to the second direction”. Page 23, lines 22 to page 24, line 2 and Fig 6C, 6C do not disclose the first direction is *substantially* non-parallel relative to the second direction (claim 47). Third, on pages 6-8 of the Remarks, the applicant argues that the examiner failed to establish a prime Facie evidence of obviousness in the claim rejection. The examiner disagrees because the examiner has adopted the objective standard of the obviousness and the Supreme Court’s case law under KSR. The claim rejection above has explained the examiner’s position. It is noted that the applicant still did not point out any limitations from the claims that the prior art patents fail to teach or suggest. Since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements or steps as claimed by known method or means with no change in their respective functions, then, the combination would have yielded predictable results to on ordinary skill in the art at the time of the invention. (See KSR International Co. v. Teleflex, Inc. 82 USPQ 2d 1385 (2007)). The applicant also failed to show in the claims that any known elements would produce unexpected results. Finally, on page 9 of the Remarks, the applicant argues that the other dependent claims remain patentable for the same reasons as stated in the independent

claims. The examiner does not agree. With regard to the newly added broad claims 48-54, these broad claims are clearly anticipated by the prior art patents as stated in the above rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 571 272 4878. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KENNETH RINEHART can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jiping Lu/
Primary Examiner
Art Unit 3743

J. L.